



Case No. 5:10-CV-149

Gwin, J.

judgment when a Petitioner uncovers “newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial.”<sup>7</sup> In this case, Petitioner’s new evidence includes statements from a former Portage County deputy sheriff that police refused to turn over significant exculpatory evidence to Trimble.<sup>8</sup> The Petitioner could not have discovered this evidence before trial or during his initial habeas petition.

Furthermore, judicial efficiency supports appointing co-counsel for the evidentiary hearing because the hearing’s scope is limited, the matter is serious, and Mr. Newman and Mr. Wilhelm are experts in this case.

For the foregoing reasons, the Court **GRANTS** the Petitioner’s motion for appointment of counsel.

IT IS SO ORDERED.

Dated: February 28, 2017

s/ James S. Gwin  
JAMES S. GWIN  
UNITED STATES DISTRICT JUDGE

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<sup>7</sup> Fed. R. Civ. P. 60(b)(2).

<sup>8</sup> Doc. [87-1](#). In an email to the Portage County Public Defender’s Office, former Deputy Sheriff Michael Muldowney stated “I am reaching out to you—to make sure certain information about the Trimble case are known, so Justice can be served.” Sheriff Muldowney wrote that “I learned that a Rogue Swat Officer was in Sara Positano duplex during the 2hr cool off period.” At trial, the state had denied that any officers had prematurely entered Positano’s residence. Doc. [87](#) at 2.